

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	
Steven McCanne, et al.	:	Confirmation No.: 6737
Serial No.: 10/618,369	:	Examiner: Joiya M. Cloud
Filed: July 10, 2003	:	Group Art Unit: 2144

For: SYSTEM FOR MULTIPOINT INFRASTRUCTURE TRANSPORT IN A  
COMPUTER NETWORK

Mail Stop AF  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

ATTACHMENTS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

The following clear errors occur in the currently maintained rejections of the Final Office Action mailed April 29, 2008, and the Advisory Action mailed September 15, 2008:

- I. **The Rejections of claims 16, 18-24, 26 and 28-39 under 35 USC 103(a) as being unpatentable over Haggerty, in further view of Srivastava are based on a clear technical error.**

Applicants respectfully submit that citing Srivastava is a clear error because Srivastava is ineligible as a reference.

The Office Action conceded that Haggerty does not describe: **“logic that indicates that the apparatus has been designated as a sole rendezvous node in the multicast group, wherein designation as the sole rendezvous node indicates that the apparatus is to disseminate the plurality of entries to members of the multicast**

group,” recited in claim 16. (Office Action, page 4) However, the Office Action alleges that Srivastava teaches the above feature. (Office Action, page 4)

Applicants respectfully submit that Srivastava is ineligible as a reference. Srivastava was filed on December 22, 1999, whereas applicants claim priority from the Provisional Patent Application Serial No. 60/137,153 filed on June 1, 1999, which is more than five (5) months before Srivastava’s priority date. Further, applicant’s present application is a divisional of the parent application Serial No. 09/412,815 filed on October 5, 1999, which is more than two (2) months before Srivastava’s priority date. The above information is available to the Office via the PAIR system, under the “Continuity Data” tab.

Independent claims 26 and 36 recite features similar to those recited in claim 16. Therefore, claims 26 and 26 are not unpatentable over Haggerty in view of Srivastava for the reasons discussed for claim 16.

Applicants submit that Srivastava cannot be used to reject claims 16, 26 and 36 under 35 U.S.C. § 103(a). Therefore, applicants respectfully request reconsideration and removal of Srivastava as a reference.

**II. Disregarding the Amendment proposed by Appellants to overcome the Rejections of Claims 16-24 and 37 under 35 USC 101 as allegedly changing the scope of the claims as originally presented is based on a clear factual error.**

The claim’s Rejection is also based on a clear factual error. The Advisory Action alleges that claim amendment proposed by Appellants on June 30, 2008, in response to the Final Office Action changes the scope of the claims as originally presented and would require further search and consideration. (Advisory Action, page 2) This is incorrect.

In response to the Final Office Action, Appellants filed a Reply, in which, to overcome the 35 USC 101 rejection, Appellants amended independent claim 16 as follows:

16. (Currently Amended) An apparatus for processing data at a node in a data network, wherein the data network connects a plurality of nodes and at least a portion of the plurality of the nodes form a multicast group, the apparatus comprising:
- a data store that stores a plurality of entries associated with the multicast group, wherein each entry identifies a source that published the entry; and one or more processors comprising one or more sequences of instructions which when executed by one or more processors, cause the one or more processors to perform;
  - logic that disseminates the plurality of entries to members of the multicast group;
  - logic that receives, from a node that is not a member of the multicast group, a request to run a query, wherein the query specifies matching criteria;
  - logic that runs the query against the entries in the data store;
  - logic that indicates that the apparatus has been designated as a sole rendezvous node in the multicast group, wherein designation as the sole rendezvous node indicates that the apparatus is to disseminate the plurality of entries to members of the multicast group; and
  - logic that disseminates one or more entries that satisfy the matching criteria to the node that is not a member of the multicast group.

Support for the amendment is provided at least on page 3, lines 2-8, of Appellants' specification: "[t]he processing agent comprises a state memory and a protocol processor. The processor has logic to couple to a selected node in the data network and has logic to transmit and receive data with other processing agents in the data network over a data channel using a reliable protocol. The protocol processor also couples to the state memory and has logic to store and retrieve the data to and form the state memory, respectively."

The Federal Court in Phillips v. AWH Corp., 415 F3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) held that during patent examination, the pending claims may be "given their broadest reasonable interpretation consistent with the specification." The court expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard by stating that "The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction 'in light of the specification as it

would be interpreted by one of ordinary skill in the art.” *Id.* The court also stated that “the rules of the PTO require that application claims must ‘conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by references to the description.” *Id.*

Therefore, Appellants fail to see how the proposed amendment, which is fully supported by Appellants’ specification, may possibly change the scope of the claims as originally presented. Further, Appellants fail to see how the proposed amendment may possibly require any additional search and consideration by the Examiner.

Therefore, Applicants respectfully submit that rejecting Applicants’ amendment is a clear factual error. Reconsideration is respectfully requested.

Throughout the pendency of this application, please charge any additional fees, including any required extension of time fees, and credit all overpayments to the deposit account 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: October 22, 2008

/MalgorzataAKulczycka#50496/

Malgorzata A. Kulczycka

Reg. No. 50,496

2055 Gateway Place, Suite 550  
San Jose, California 95110-1089  
Telephone: (408) 414-1080 ext. 228  
Facsimile: (408) 414-1076

